



**Association for Criminal Justice Research and
Development (ACJRD)**

**Submission to:
The Department of Justice and Equality**

Draft Youth Justice Strategy 2020-2026

ACJRD seeks to promote reform, development and effective operation of the Criminal Justice System

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1 Introduction

- 1.1** The Association for Criminal Justice Research and Development (ACJRD) is a non-governmental, voluntary organisation which seeks to promote reform, development, and effective operation of the criminal justice system. It does so mainly by providing a forum where experienced personnel can discuss ways of working in an informal setting, by promoting study and research in the field of criminal justice and by promoting the highest standards of practice by professionals associated with criminal justice. ACJRD informs the development of policy and practice in justice.
- 1.2** The ACJRD's membership is varied but is largely comprised of individuals who have experience working within the criminal justice system and who have a strong interest in criminological matters. These include legal practitioners, academics, Criminal Justice Agencies and NGOs.
- 1.3** The ACJRD's approach and expertise is therefore informed by the 'hands on' expertise of practitioners, academics and agencies who deal with various aspects of the criminal justice system enhanced by the contribution of people with diverse experiences, understandings and practices.
- 1.4** However, the views expressed in this submission are those of ACJRD in its independent capacity and are not those of individual ACJRD members or member organisations or agencies or their employees.
- 1.5** The purpose of this submission is to provide an overview of the principles the ACJRD believes must be included in the Department of Justice Youth Justice Strategy 2020-2026 and review the draft strategy in light of those principles. Any suggestions made by the ACJRD in respect of issues to be clarified or additions to be made to the strategy are made in light of what the ACJRD believes are essential factors in any youth justice system that has the ultimate aim of reducing youth offending and ensuring that any engagement a juvenile does have with the criminal justice system is positive and rehabilitative.
- 1.6** This submission will reflect on the stages of the Youth Justice System from Early Intervention and Prevention – Sentencing and Detention and Post Detention. It will set out the ACJRD's view on important issues arising in those areas and make recommendations about what should be included in the Strategy.

1.7 The ACJRD notes the Department of Justice “Strategic Review of Penal Policy” Final report July 2014 which addresses many of the areas raised in this submission and suggests that the Youth Justice Strategy 2020-2026 should include a commitment to implement the recommendations in that report, with particular reference to Recommendation 2, “our law and practice in the area of penal policy should be just, proportionate, humane and should aim to reduce reoffending behaviour, and reliance on prison as a sanction....These principles should inform all aspects of penal policy from diversion through to sentencing, serving of sanction, rehabilitation and exit from sanction.”¹

1.8 At the outset, the ACJRD recommends that the strategy contains clarity on the following issues;

- I. Who will sit on the National Oversight Committee?
- II. Who will be responsible for the co-ordination of the multiple agencies?
- III. What are the aims of the Youth Justice Strategy 2020-2026 and how will the success of the strategy be evaluated?
- IV. How the best interests and voice of the child will be included in the Strategy? The ACJRD suggests that a youth representative should sit on the oversight committee and recommends the establish of a working group which includes children or young people who have been in contact with the CJS or are in a demographic that is at risk of coming into contact with the CJS.

2. Restorative Justice Principles

The ACJRD submits that at the core of any Youth Justice System must be a commitment to Restorative Justice Principles. Restorative Justice has a place at every level of the Youth Justice System from Diversion – Sentencing and attention is drawn to “Towards Excellence in Restorative Practice: A Quality Assurance Framework for Organisations and Practitioners.”² The ACJRD notes reference to Restorative Justice throughout the Draft Strategy including at 2.1.1(b) a commitment to the promotion of restorative justice principles. The ACJRD welcomes the intention that Restorative Justice be used throughout the Youth Justice System including at the Court stage however, the ACJRD submits there should be a clearer commitment to Restorative Justice as a guiding principle throughout the strategy that the strategy should include further detail about the restorative practices to be implemented and at what stages of the Youth Justice System they will be available.

¹ Department of Justice, “Strategic Review of Penal Policy Final Report 2014” available at <http://www.justice.ie/en/JELR/Strategic%20Review%20of%20Penal%20Policy.pdf/Files/Strategic%20Review%20of%20Penal%20Policy.pdf> accessed June 2020

² O’Dwyer, K. (2014) Towards Excellence in Restorative Practice – A Quality Assurance Framework for Organisations and Practitioners. Dublin: Restorative Practices Strategic Forum.

3. Early intervention and prevention

3.1 The ACJRD believes early intervention and prevention must be at the core of any Youth Justice Strategy and welcomes the inclusion of ‘Early Support for Vulnerable Children and Young People as Priority Area 2 in the Daft Strategy and to ‘Strengthen and Expand Diversion Measures’ at Priority Area 3. Early intervention and prevention is key to reducing the numbers of young people who come into contact with the criminal justice system and benefits communities as a whole.

A. Identification of risk factors

The inclusion of ‘Research and Evidence’ as part of Priority Area 1 – enhancing youth justice oversight and monitoring is a welcome addition to the strategy. Any youth justice strategy must focus on what early interventions are effective at preventing a young person from coming into contact with the criminal justice system. To do so, the strategy must effectively identify the risk factors that contribute to a young person coming into contact with the CJS and research in the Irish context is required. The ACJRD suggests that the traditional approach to the identification of risk factors, using the ‘Risk Factor Prevention Paradigm’³ should be expanded to include the effects of childhood trauma and Adverse Childhood Experiences⁴. The ACJRD notes the comments of the IPRT in this regard⁵ and suggests that the research collected in respect of ACE and the effects of childhood trauma on children and young people in care should inform the approach taken to the identification of risk factors of all children and young persons. The ACJRD also draws attention to the Edinburgh Study of Youth Transitions and Crime and suggests the finding of this project should be used to inform the Irish Youth Justice Strategy.⁶

³ Farrington D (1996) *Understanding and Preventing Youth Crime* (York): JRF and Farrington D (2007) ‘Childhood Risk Factors and Risk Prevention’ in M. Maguire, R. Morgan and R. Reiner (eds) *The Oxford Handbook of Criminology* (Oxford: Oxford University Press), pp602 – 640 and Haines, K. & Case, S. (2008) ‘The rhetoric and reality of the ‘Risk Factor Prevention Paradigm’ approach to preventing and reducing youth offending,’ *Youth Justice*, 8(1), 5–20 and O’Mahony, P. (2009) ‘The Risk Factors Prevention Paradigm and the causes of youth crime: A deceptively useful analysis?’ *Youth Justice*, 9(2), 99–114

⁴Steinke, Camela M. & Derrick, Raquel Moriarty, 2018. "[An exploration of the role of adverse childhood experiences \(ACEs\) on youth engagement in residential treatment,](#)" *Children and Youth Services Review*, Elsevier, vol. 89(C), pages 355-363 and Turney K, Wildeman C. Adverse childhood experiences among children placed in and adopted from foster care: Evidence from a nationally representative survey. *Child Abuse Negl.* 2017;64:117-129. doi:10.1016/j.chiabu.2016.12.009

⁵ Carr N & Mayock P, Irish Penal Reform Trust, Care and Justice, *Children and Young People in Care and Contact with the Criminal Justice System 2019* <https://www.iprt.ie/site/assets/files/6489/care-and-justice-web.pdf> accessed June 2020

⁶ The University of Edinburgh, Edinburgh Law School, *Edinburgh Study of Youth Transitions and Crime* <https://www.edinstudy.law.ed.ac.uk/> accessed on 26th June 2020

B. Addressing risk factors and prevention

When risk factors are identified, effective strategies must be implemented to mitigate those risks. In that regard, it is noted that “The strongest existing ‘what works’ research to date has established with reasonable replication the effectiveness of programmes described as cognitive behavioural, targeted to individuals with higher risk scores, that teach skills such as emotional regulation and perspective taking.”⁷ and “...people are more likely to desist when they have strong ties to family and community, employment that fulfils them, recognition of their worth from others, feelings of hope and self-efficacy, and a sense of meaning and purpose in their lives.”⁸ The ACJRD welcomes the clear theme throughout the Draft Youth Justice Strategy of multi-agency collaboration.

The ACJRD notes members concerns that in more recent years there has been an increase in the use of young people by organised criminal gangs. This is an area that must be addressed in collaboration with young persons, parents, An Garda Síochána and community supports. Investment in community supports is key to the successful diversion of children and young persons from the CJS.

The ACJRD recommends funding be provided for the establishment of a specialised forensic assessment and intervention service available to children and young persons who are at risk of coming into contact with the criminal justice system. This service should be wholly independent of the criminal justice system, which will foster the trust of its service users, but consideration should be given to providing for referrals from schools, community projects, general practitioners and perhaps An Garda Síochána.

C. Substance abuse as a risk factor & the Icelandic Model

The education of parents and other adults who come into contact with children and young persons who are at risk of offending is vital. Where there are concerns for young people engaging in criminal activity or substance abuse it is important that adults can identify processes and strategies to elevate concerns for such activity among young people themselves and with their parents, guardians and other adults towards establishing robust, co-ordinated and sustainable interventions over a long period of time. Brief interventions have a place but if we are to effect meaningful change for young people, families and communities then there is a need for increased social interventions which aim at reducing the harm caused to individuals, families, communities and society especially in circumstances where there are signs that a young person’s criminal activity is being encouraged/facilitated by adults and that their use of substances extends beyond curiosity and experimentation.⁹

⁷ Maruna S & Mann R, Reconciling Desistance and What Works, HM Inspectorate of Probation Academic Insights 2019 Page 7 Para 2

⁸ Ibid Para 3

⁹ ACJRD Member

Consideration should be given to the Planet Youth model as developed by the Icelandic Centre for Social research and Analysis (ICSRA) at Reykjavik University which works by targeting the risk and protective factors that determine a young persons substance use and behaviours and enhancing the social environment which they grow up in and thereby preventing the problems associated with adolescent substance misuse. In Iceland, the model has successfully reduced the level of substance use by young people through having a consistent focus on local community, cross-disciplinary collaboration and investment.¹⁰ Planet Youth Projects are running in Galway, Mayo and Roscommon as five-year pilot programmes. The ACJRD recommends that consideration be given to providing funding to extend the Planet Youth Projects nationwide if there is a positive evaluation of the pilots.

It is also essential that all professionals and agencies have a good understanding of the tiered models of intervention as outlined by Hardiker (1991)¹¹ and the four tier substance misuse intervention model (Department of Health and Children, 2005)¹², as they both involve risk assessment and require that appropriate and timely referrals are made where a particular need is identified.¹³

D. Multi-Disciplinary Approach

To effectively identify risk factors and individual children or young persons who are at risk of coming into contact with the CJS requires a multi-agency approach including schools, community projects, Tusla and An Garda Siochana. The ACJRD welcomes strategic objective 1.4 'Coordinated Services' but recommends the strategy provides clarity about who is responsible for the running and management of these co-ordinated services. Consideration must also be given to how these services are regulated.

Adopting a multidisciplinary approach involves more than the concept of different agencies working together. Drawing on a co-production model, Weaver et al (2019)

¹⁰ Jon Sigfusson, ICSRA, Evidence Based Primary Prevention The Icelandic Model <https://www.regionh.dk/forebyggelseslaboratoriet/møder/Documents/Planet%20Youth%20Copenhagen%20November%202018%20FIN.pdf> accessed 25th June 2020

¹¹ Hardiker, P., Exton, K. & Barker, M. (1991) *Policies and Practices in Preventative Care*, Aldershot: Avebury.

¹² Ireland, Department of Health and Children (2005), Report of the Working Group on Treatment of Under 18 year olds presenting to Treatment Services with Serious Drug Problems", Dublin: The Stationery Office

¹³ ACJRD Member

contend that the effectiveness of multidisciplinary approaches needs to be underpinned by a recognition of 'reciprocity' which recognises the role of service users in achieving and sustaining outcomes. They point to the benefits gained by adopting a whole systems approach as advocated by SCIE 2013 because this results in supporting social desistence, promoting social justice and citizen and crucially, the effectiveness and credibility of services. (Weaver et al, 2019 pg. 8)¹⁴

4. Diversion

4.1 The Juvenile Diversion Programme and Garda Youth Diversion Projects are at the frontline of intervention and diversion. The ACJRD make the following submissions in respect of the Juvenile Diversion Program and Garda Youth Diversion Programme;

A. Garda Youth Referral Examination Report 2019

ACJRD welcomes the commitment at Priority Area 2.5 to implement the recommendations in the 2019 Garda Youth Referral Examination Report.

B. Expansion of Diversion Programme

The ACJRD notes Recommendation 4 of the Strategic Review of Penal Policy 2014 to expand the Juvenile Diversion Programme to 18 0 21 year olds. The ACJRD suggests the Youth Justice Strategy should include a commitment to this recommendation with the caveat that the ACJRD suggests the expansion of the Juvenile Diversion Programme extends to 24 year olds for the reasons outlined at 4 (B) (vi) below.

C. Garda Inspectorate Crime Investigation Report 2014

The ACJRD draws attention to the 2014 Garda Inspectorate Crime Investigation Report which recommended at 10.2 that the Garda Síochána improves the current operation of the Garda Youth Diversion Programme and suggested the following key actions as important.

- i. Ensure that all eligible cases are referred to GYDO for decisions
- ii. Ensure that the processing of young offenders is completed in a timely manner

¹⁴ Weaver, B, Lightowler, C and Moodie, K. (2019) Inclusive Justice Co-producing Change. A practical guide to service user involvement in community justice. University of Strathclyde Glasgow and SCIE (2013) Coproduction in Social Care: What it is and how to do it. <https://www.scie.org.uk/publications/guides/guide51/>

- iii. Ensure that cases deemed unsuitable for JLO cautions are progressed towards prosecution
- iv. Evaluate and clarify garda policy in the application of multiple cautions.

The implementation of actions in this jurisdiction would require targeted training, integration, resourcing and supported service delivery. The improvement of the Garda Youth Diversion Programme can only serve to improve outcomes for victims, communities, and offenders. A successful Diversion Programme should result in the total diversion of a child from the criminal justice system, although of course this cannot be the responsibility of the Garda Youth Diversion alone and as such a multi-agency approach at this level is particularly important.

D. Reasons for refusal to enter programme

The ACJRD welcomes the inclusion of Appeals and Transparency in relation to the Garda Diversion Programme. This is in line with the High Court decision of *S v The Director of the Juvenile Diversion Programme & Ors*,¹⁵ which states that reasons must be given for a refusal to admit a child or young person to the program. This aspect of the strategy should be implemented immediately.

E. JLO caution v spent convictions

The ACJRD welcomes the alignment of the Diversion Programme and JLO cautions with Section 258 of the Children's Act and the Spent Convictions Legislation and the recognition that the misalignment is an anomaly. While a change to the legislation is likely to take some time, an informal rectification of this anomaly can be effected by the issuing of a direction to the Garda National Vetting Bureau that cautions under the Garda Diversion Programme should not be disclosed in any vetting application. The ACJRD recommends that this be done as a matter of priority.

F. Future Proofing the successful delivery of the Juvenile Diversion Programme – An Independent Body?

In the context of Government Policy towards a multi-agency approach described at strategic objective 1.4 'Coordinated Services', it is posited that consideration should be given to transferring that structure to the Diversion Programme to an independent unit. Such a body would require targeted investment and long-term strategic planning for children who come to the attention of the Criminal Justice System, thereby permanently securing it.

¹⁵ [2019] IEHC 796

The Juvenile Diversion Programme as it currently operates does great work, but issues can arise in the context of a Juvenile Liaison Officer (JLO) discussing diversion options with a child. If that child then opts for a caution from that JLO, issues may arise under The Judges Rules as to what may have been said to the child in advance of that decision. There is the potential therefore for there to be a conflict of interest between the role of the JLO advising the child and subsequently acting as an agent of the Criminal Justice System who is cautioning the child. It is possible that, with appropriate training, youth workers could advise on the options prior to the JLO administering the caution.

Policy considerations that prioritise ‘the voice of the child’ could be encapsulated in such a standalone independent body. It could bring agencies together from various sectors to include An Garda Síochána, and specialist child-centred agencies and NGOs with expertise in education, health, victim’s rights (to include adverse childhood experiences of alleged offenders) youth work and others, within a restorative justice framework.

5. Criminal Justice Process

A. Investigation

i. Age of culpability

The age of culpability in Ireland is 12 years of age for the majority of offences and 10 years of age for the most serious offences of rape and murder. The ACJRD submits that a review of the age of culpability in Ireland is required and should be conducted as part of the Youth Justice Strategy with the ultimate aim of bringing the Irish position in line with accepted international norms. In this regard the ACJRD notes the United Nations Committee on the Rights of the Child found that 12 years of age is still too low and encouraged state parties to increase their minimum age to 14.¹⁶

ii. Protections in Garda Stations

The ACJRD welcomes the proposed review of the facilities and procedures in Garda Stations at 3.2 of the Draft Strategy. Section 56 of the Children’s Act provides that children should not be kept in a cell unless there is no other secure accommodation available. It is the experience of ACJRD members that in practice, this is the exception, rather than the rule. The ACJRD submits that this issue needs to be addressed urgently and consideration given to the

¹⁶ UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children’s Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, available at: <https://www.refworld.org/docid/4670fca12.html> [accessed 28 June 2020]

establishment of custody suites designed specifically to deal with the needs of children in custody and ensure their rights under the Children’s Act are protected. If children are to be kept in cells, it should be a requirement that this is noted in the custody record together with the reasons for same and an annual report should be provided to the National Oversight Committee or any regulator that may be established (as recommended above).

iii. Training for An Garda Siochana on the neurodiversity of children and young persons

The ACJRD welcomes the clear focus on training of all professionals who come into contact with young people in the Youth Justice System. This is particularly important for Gardai who are frequently dealing with young people in heightened states of emotion. The training of Gardai to recognise a child in crisis or with particular behavioural/personality/psychological needs and providing them with the tools to de-escalate the young person will protect both gardai and young people and should result in a more positive experience for both, thereby fostering trust.

B. Prosecution

i. Youth Court example

The Centre for Justice Innovation, together with the Institute for Crime & Justice Policy Research and Birkbeck University of London released a briefing paper in May 2020 which outlines the experiences of juvenile’s in the Youth Court in England. What is central to their findings is that young people want to see procedural fairness and four factors are central to this; an understanding of the court process, having a voice in proceedings, being treated with respect and dignity and being able to trust the neutrality of the decisions made.¹⁷ Essentially, when young people felt they were treated as individuals and with respect, their experiences of the Youth Court were positive and presumably, more effective in diverting them from any further criminal activity.

ii. Court environment, introducing children to court and personnel – Hamond Lane Court?

The Children Court in Smithfield, Dublin 7, is the only Court in the country that is used solely for juvenile cases, other Children Courts sit in Adult Courts on different days or different times. The staff in the Children Court in Smithfield conduct their work with great professionalism and respect for the service users

¹⁷ Centre for Justice & Innovation, Institute for Crime & Justice Policy Research and Birkbeck University of London, Young Peoples Voices on Youth Court May 2020

and must be commended, however, the building is not fit for purpose. In particular, the cells in which children are held are in need of renovation. The Court is lacking satisfactory toilet facilities for children and parents and there are no consultation rooms. The Children Court ought to be 'family friendly', the parent of an alleged juvenile offender should have access to child-friendly resources for example child-minding and nappy changing facilities for younger children. The provision of such facilities recognises the importance of the engagement of parents in the Youth Justice System and acknowledging the practical challenges faced by some parents in accompanying a child or young person to Court. The ACJRD notes that it was previously intended that a new purpose-built Children Court be built at Hammond Lane and recommends that this proposal is revisited in early course.

A large number of young people who appear in that Court do so on a fairly regular basis and are well used to the operations of the Court, however, having reference to the research by The Centre for Justice Innovation, a practice should develop where a young person who has not been before the Court before, be introduced to the Judge, Registrar, Probation Officer and Court Sergeant. The development of this practice will be the responsibility of Judges, defence practitioners and registrars. Such a practice should be included in the training of all stakeholders in the Youth Justice System.

iii. Pre – Trial Detention and Bail Supervision Program

The Bail Supervision Programme run by Extern is an excellent programme and the ACJRD strongly welcomes its extension. An evaluation carried out by the Department of Children and Youth Affairs in conjunction with University of Limerick found the scheme effected a 72% reduction in re-offending in the young people who were referred to it. In comparison, remanding to detention only resulted in a 37% reduction in re-offending.¹⁸ These figures clearly illustrate the effectiveness of the Bail Supervision Scheme and support the supposition that non-detention solutions are a preferable way of dealing with young people in the criminal justice system.

Central to the success of the Bail Supervision Scheme is the education and training of the professionals in the youth justice system who will play key roles in the referrals of young people to the Scheme. It is essential that Judges, practitioners and Gardai are aware of the Scheme, its benefits and the referral process. ACJRD respectfully suggests that a practice direction could be issued to Judges that states that before refusing bail they must refer a child to the Scheme unless in the most exceptional of circumstances under Section 2 of the Bail Act. All defence practitioners who represent children and young persons

¹⁸Catherine Naughton, Sean Redmond, Barry Coonan, Evaluation of the Bail Supervision Scheme for Children (Pilot Scheme), Department of Children and Youth Affairs, December 2019 Page 7

must be made aware of the Scheme. Special training must be provided to Judges and not just those Judges who sit in the Children Court as frequently, children and young persons will appear before emergency sittings or at Saturday Court, where bail applications are contested and the presiding Judge is not one who presides in the Children Court. The ACJRD notes the establishment of the Judicial Council under the Judicial Council Act. One of the roles of the Judicial Council will be the provision for the education of judges through the Judicial Studies Committee and the ACJRD suggests there may be a benefit to the Judicial Studies Committee partnering with external training providers, for example, IYJS partnered with Extern in the implantation of their Bail Supervision Programme.

At present, referrals are made from Oberstown Detention Centre and Court 55.¹⁹ The scope for referral should be extended to the High Court when Judges are hearing High Court Bail applications.

While the Draft Strategy refers to the nationwide extension of the Scheme, it is noted that in fact the Scheme will only be extended to Cork, Galway and Limerick. The ACJRD submits that priority should be given to truly extending the scheme nationwide.

It was not previously possible to include children in care in the Scheme because there was no ‘parent’ or ‘family’ to liaise with as required by the model pilot. The ACJRD notes that it is now possible to include children in care in the Scheme and submits that the Strategy should include a clear commitment to extend the scheme to children in care and to provide whatever resources or funding that is required to implement this as a matter of priority.

iv. Extension of the Children Act to young persons who have “aged out.”

Recent jurisprudence from the High Court makes it clear that when a young person turns 18, they lose significant protections contained in the Children Act 2001, despite being tried for an offence allegedly committed when they were a child. This includes the loss of anonymity under section 252 Children Act,²⁰ the right to make submissions in respect of jurisdiction under Section 75, mandatory probation reports and sentencing principles. The Children Act should be amended to extend to young persons charged with an offence allegedly committed when the person was a juvenile. The ACJRD welcomes at page 33 of the Draft Strategy the acceptance that the actions of a young person should be judged with reference to the level of maturity and capacity to comprehend the impact of offending behaviour at the time an offence is

¹⁹ Ibid page 13-15

²⁰ Dos Santos v DPP [2020] IEHC 252 and DPP v E [2020] IECA 101 and AB v DPP unreported 21st January 2020

committed and the intention to amend the CA to allow the Children Court to hear cases of over 18s in relation to offences occurring when under 18.

v. Training for defence and prosecution lawyers and judges

The ACJRD welcomes the focus placed on the training of all stakeholders in the Youth Justice System and the increasing recognition that a multitude of factors, including a child's individual experiences, family and education needs and neurodiversity impact on the reasons for their offending behaviour, the supports that can be put in place to prevent re-offending, their experience of the youth justice system and how they should be dealt with by courts. Many children and young persons in the criminal justice system present with complex histories and needs, training should be provided to all stakeholders about how to recognise children and young persons with special needs and what supports are available to them. In members experience, the most positive interactions children have with Gardai and the Courts are when they are treated as individuals with unique histories and genuine consideration is given to all the factors contributing to their engagement in the criminal justice system. It is important that all the stakeholders recognise a child or young persons understanding of the consequences of their actions, their ability to provide instructions and engage in the criminal justice process as a whole is influenced by past/ongoing trauma, the speed at which their brain has developed, current circumstances and past experiences. From a defence practitioner point of view, training could only assist in effectively communicating with children and young persons who might have heightened responses, intellectual difficulties etc and in turn defence practitioners would become better advocates on their behalf.

vi. Recognition of 18 – 24-year olds as young people in the context of Youth Justice.

The United Nations defines a “young person” as a person under the age of 25²¹ and the ACJRD submits the youth justice strategy should be in line with the international definition. In that regard, the ACJRD notes that the Department of Children and Youth Affairs National Policy Framework for Children and Young People, 2014-2020, “Better Outcomes, Brighter Futures” defines “youth” as a person aged up to 25 years of age.²²

Recognition must be given to the transition period between childhood and adult. It is not sufficient to have a youth justice system that provides only for children or young persons under the age of 18. The current policy of treating a

²¹ United Nations General Assembly, International Youth Year: Participation, Development, Peace, Report of the Secretary General, 19th June 1981, Resolution A/36/215 available at <https://undocs.org/en/A/36/215>

²² Better Outcomes, Brighter Futures: The National Policy Framework for Children and Young People, 2014-2020 Department of Children and Youth Affairs 13th March 2019 page xvi

young person as a fully grown adult the day they turn 18 is impractical and fails to recognise the complex neurodiversity of children and young people and the scientific evidence showing which shows that young people's brains do not fully develop until they are 24. The ACJRD draws attention to the IPRT Report "Turnaround Youth" published in May 2015 which elaborates on this point. The ACJRD recommends that the Youth Justice Strategy 2020-2026 advances proposals for a transition period between the youth criminal justice system and the adult criminal justice system. This should include educational training for stakeholders.

vii. Case managers

Case managers should be appointed to all children who regularly appear before the Children Court, this is particularly important for children in care whose address may change on a regular basis. ACJRD is aware of instances where children in care were denied a case manager because their address changed regularly. This is an unsatisfactory situation. The provision of case managers to all juvenile offenders who are regularly before the Children Court will reduce prosecutorial delay, allow gardai to monitor offending behaviour and avoid situations where a young person turns 18 and is subsequently charged with offences allegedly committed as a juvenile. Such situations are particularly detrimental when young persons are making efforts to move on with adult life and away from offending, not to mention the prejudice arising from the loss of the protections of the Children Act.

viii. Prosecution of children for offences committed while in care.

The ACJRD respectfully submits that there is an inherent unfairness in the prosecution of children or young persons for minor offences committed while they are the subject of a special care order and detained in centres to receive therapeutic treatment. The ACJRD recognises that serious offences must be prosecuted but, suggests that in many cases it is not in the interests of justice or in the public interest for such offences, such as criminal damage, to be prosecuted. The ACJRD submits that guidelines in relation to the prosecution of offences committed while juveniles are receiving therapeutic treatment should be provided.

C. Sentencing

While it is accepted policy in Irish Youth Justice that detention should be used only as a last resort (in accordance with Article 37 (b) UNCRC), the sentencing provisions open to the Courts require review. This arises in particular in light of an increase in very serious offending by juveniles in recent years.

i. Detention and Supervision Orders

Section 151 of the Children Act 2001 provides for a supervision and detention order for children between 16 – 18 years of age. This means a child may be sentenced to a period of detention followed by a period of supervision by probation services in the community. This is an extremely useful sentencing option for more serious offences which also assists with the successful reintegration of a child into the community after a period of detention. The difficulty arising is that Judges are unwilling to make such orders if the child would turn 18 before the order runs out. The result of this is that in the most serious of cases, children are being denied the benefit of this sentencing option, which the ACJRD submits is unfair and creates a situation where the only option available to a Judge in the most serious of cases is a period of detention that is longer than it would be were s. 151 available.

ii. Suspended sentences

A similar issue to that raised above applies to suspended sentences. The Court of Appeal held in *DPP v AS* in 2017²³ that there is no jurisdiction to impose a suspended sentence on a juvenile, this arose in context of Section 99 Criminal Justice Act 2009. As such, the imposition of a suspended sentence as a sentencing option is no longer available to Judges sitting in the Children Court. This difficulty arises in particular in more serious cases and in conjunction with the issues raised above in respect of detention and supervision orders, leaves sentencing judges in a position where the non-detention sentencing options or those with a reduced detention period are narrowed. If we are to truly give effect to the principle that detention must only be used as a last resort²⁴, judges must have appropriate non-detention or reduced detention options open to them. The ACJRD submits that the Children Act should be amended to provide for suspended sentences for juveniles.

iii. Enhanced Remission

Standard one quarter remission applies to sentences of detention however, juveniles are prohibited from applying for enhanced remission, which for adults is one third. The Supreme Court considered this issue recently in the case of *B v The Director of Oberstown Children Detention Centre & Ors*²⁵, finding that there was no provision for enhanced remission in the Children Act. It is submitted the Children Act should be amended to allow juveniles to apply for enhanced remission. Such a provision would be consistent with the

²³ [2017] IECA 310

²⁴ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 28 June 2020]

²⁵ [2020] IESC 18

principle that detention should be used only as a measure of last resort and for the shortest appropriate period of time.²⁶

iv. Bridging the gap when young people leave detention

The ACJRD welcomes the inclusion at priority area 5 of enhanced interagency support framework for post-Detention services. To effectively prevent re-offending, key supports such as accommodation, education, employment and social supports must be in place in advance of children leaving detention. This is particularly important for children in care who do not have family supports available to them. ACJRD is aware of instances of young persons in care leaving detention without the necessary supports in place with the result they are housed in hotel or unstable accommodation. Young people leaving detention are vulnerable and must be thoroughly supported to avoid engaging in risky behaviour that may lead to re-offending. The ACJRD recommends the strategy requires clear post release plans for young persons leaving detention which clearly states who is responsible for the arrangement of supports and accommodation and a time frame in which they must be provided, to ensure that they are in place before the child or young person leaves detention.

v. Part 2 Sex Offenders Act 2001

At present, Section s.8(4)(b) of the Act provides that person who is under the age of 18 *at the time of sentencing* may be subject to the requirements of Part 2 of the Act for a period of “5 years, 3½ years and 2½ years”. The ACJRD submits that in circumstances where the requirements under the Act apply to persons convicted of any manner of sexual offence, including minor sexual offences, and for the purposes of giving true regard to the varying degrees of maturity and neuro-diversity of children, the Act should be amended to give judges the discretion to impose a shorter period of supervision, as may be appropriate. The ACJRD further recommends that s.8(4) (b) be amended to include persons who were 18 at the time of the offence for which they have been convicted.

D. The Provisions of the Children Act should be extended to all persons who are charged with an offence before they turn 18.

At present, the protections of the Children Act, for example the right to anonymity, mandatory pre-detention probation reports, sentencing principles and importantly, section 75 submissions, expire as soon as a person turns 18, regardless of the date of the alleged offence. This is unfair in the context of young people who turn 18 and are subsequently charged with an offence

²⁶ Ibid 17

allegedly committed when they were a juvenile or where a juvenile is charged with an offence and then “ages out” before proceedings are concluded. Indeed, the protections of s.258, the expunging of convictions for offences committed while a minor, are diminished if the fact of such a conviction can still be reported on.

Recent dicta from the Superior Courts makes it clear that even in cases where there has been blameworthy prosecutorial delay, the Courts are unlikely to find that the loss of these protections is so prejudicial as to lead to a prohibition of trial. Most recently, in the case of *Dos Santos v DPP* the High Court found that there had been blameworthy prosecutorial delay and noted the applicant had lost the benefit of the reporting restrictions provided for in Section 93 of the Act, however, the Court found that the prejudice arising was out weighed and the balance of justice lay in favour of allowing the prosecution to proceed. The extension of the protections of the Children Act to all persons who are charged with an offence allegedly committed when they were a juvenile will remove any such prejudice in cases like *Dos Santos* while allowing justice to be done and trials to proceed.

Notwithstanding the submission above, the ACJRD submits that it is in the interests of justice that in all cases where a person is charged with an offence allegedly committed when they were a juvenile (and not just in cases where there is blameworthy prosecutorial delay), the protections of the Children Act should apply. The ACJRD submits the amendment of the Children Act to provide for this should be one of the top priorities of the strategy.

6. Victims

The ACJRD notes that while reference is made to victims of crime in the guiding principles of the draft strategy, no reference is made to the rights of victims in the priority objectives. The ACJRD submits that any Youth Justice Strategy must engage with the Victims Rights Directive and provide for the rights of victims. The ACJRD suggests this should be done at all stages of the youth justice system. At the prevention and diversion stage by educating young persons on the effects of crime on victims, perhaps as part of a program, similar to the restorative justice program in that victims of crime engage directly with young persons in the community. At sentencing stage, victims should be at the centre of any restorative justice or community sanctions.

7. Recommendations

1. The ACJRD recommends that the strategy contains clarity on the following issues;

- I. Who will sit on the National Oversight Committee?
- II. Who will be responsible for the co-ordination of the multiple agencies?
- III. What are the aims of the Youth Justice Strategy 2020-2026 and how will the success of the strategy be evaluated?
- IV. How the best interests and voice of the child will be included in the Strategy?

1.1 The ACJRD suggests that a youth representative should sit on the oversight committee and recommends;

1.2 the establish of a working group which includes children or young people who have been in contact with the CJS or are in a demographic that is at risk of coming into contact with the CJS.

2. The ACJRD submits there should be a clearer commitment to Restorative Justice as a guiding principle throughout the strategy that the strategy should include further detail about the restorative practices to be implemented and at what stages of the Youth Justice System they will be available.

3. The ACJRD suggests that the traditional approach to the identification of risk factors, using the 'Risk Factor Prevention Paradigm' should be expanded to include the effects of childhood trauma and Adverse Childhood Experiences.

3.1 The ACJRD notes the comments of the IPRT in this regard and suggests that the research collected in respect of ACE and the effects of childhood trauma on children and young people in care should inform the approach taken to the identification of risk factors of all children and young persons.

3.2 The ACJRD also draws attention to the Edinburgh Study of Youth Transitions and Crime and suggests the finding of this project should be used to inform the Irish Youth Justice Strategy.

3.3 The ACJRD recommends funding be provided for the establishment of a specialised forensic assessment and intervention service available to children and young persons who are at risk of coming into contact with the criminal justice system. This service should be wholly independent of the criminal justice system, which will foster the trust of its service users, but consideration should be given to providing for referrals from schools, community projects, general practitioners and perhaps An Garda Síochána.

3.4 The ACJRD recommends that consideration be given to providing funding to extend the Planet Youth Projects nationwide if there is a positive evaluation of the pilots.

4. The ACJRD notes Recommendation 4 of the Strategic Review of Penal Policy 2014 to expand the Juvenile Diversion Programme to 18 to 21 year olds. The ACJRD suggests the Youth Justice Strategy should include a commitment to this recommendation with the caveat that the ACJRD suggests the expansion of the Juvenile Diversion Programme extends to 24 year olds for the reasons outlined at 4 (B) (vi)

4.1 The ACJRD welcomes the inclusion of Appeals and Transparency in relation to the Garda Diversion Programme. This aspect of the strategy should be implemented immediately.

4.2 The ACJRD welcomes the alignment of the Diversion Programme and JLO cautions with Section 258 of the Children’s Act and the Spent Convictions Legislation and the recognition that the misalignment is an anomaly. While a change to the legislation is likely to take some time, an informal rectification of this anomaly can be effected by the issuing of a direction to the Garda National Vetting Bureau that cautions under the Garda Diversion Programme should not be disclosed in any vetting application. The ACJRD recommends that this be done as a matter of priority.

4.3 In the context of Government Policy towards a multi-agency approach described at strategic objective 1.4 ‘Coordinated Services’, it is posited that consideration should be given to transferring that structure to the Diversion Programme to an independent unit. Such a body would require targeted investment and long-term strategic planning for children who come to the attention of the Criminal Justice System, thereby permanently securing it.

5. ACJRD submits that a review of the age of culpability in Ireland is required and should be conducted as part of the Youth Justice Strategy with the ultimate aim of bringing the Irish position in line with accepted international norms. In this regard the ACJRD notes the United Nations Committee on the Rights of the Child found that 12 years of age is still too low and encouraged state parties to increase their minimum age to 14.

5.1 The ACJRD submits the issue of secure accommodation needs to be addressed urgently and consideration given to the establishment of custody suites designed specifically to deal with the needs of children in custody and ensure their rights under the Children’s Act are protected. If children are to be kept in cells, it should be a requirement that this is noted in the custody record together with the reasons for same and an annual report should be provided to the National Oversight Committee or any regulator that may be established (as recommended above).

5.2 The Children Court ought to be ‘family friendly’, the parent of an alleged juvenile offender should have access to child-friendly resources for example child-minding and nappy changing facilities for younger children. The provision of such facilities recognises the importance of the engagement of parents in the Youth Justice System and acknowledging the practical challenges faced by some parents in accompanying a child or young person to

Court. The ACJRD notes that it was previously intended that a new purpose-built Children Court be built at Hammond Lane and recommends that this proposal is revisited in early course.

5.3 a practice should develop where a young person who has not been before the Court before, be introduced to the Judge, Registrar, Probation Officer and Court Sergeant. The development of this practice will be the responsibility of Judges, defence practitioners and registrars. Such a practice should be included in the training of all stakeholders in the Youth Justice System.

5.4 ACJRD respectfully suggests that a practice direction could be issued to Judges that states that before refusing bail they must refer a child to the Bail Supervision Scheme unless in the most exceptional of circumstances under Section 2 of the Bail Act.

5.5 All defence practitioners who represent children and young persons must be made aware of the Bail Supervision Scheme.

5.6 Regarding the Bail Supervision Scheme special training must be provided to Judges and not just those Judges who sit in the Children Court as frequently, children and young persons will appear before emergency sittings or at Saturday Court, where bail applications are contested and the presiding Judge is not one who presides in the Children Court.

5.7 One of the roles of the Judicial Council will be the provision for the education of judges through the Judicial Studies Committee and the ACJRD suggests there may be a benefit to the Judicial Studies Committee partnering with external training providers, for example, IYJS partnered with Extern in the implantation of their Bail Supervision Programme.

5.8 At present, Bail Supervision Scheme referrals are made from Oberstown Detention Centre and Court 55.²⁷ The scope for referral should be extended to the High Court when Judges are hearing High Court Bail applications.

5.9 While the Draft Strategy refers to the nationwide extension of the Bail Supervision Scheme, it is noted that in fact the Scheme will only be extended to Cork, Galway and Limerick. The ACJRD submits that priority should be given to truly extending the scheme nationwide.

5.10 ACJRD submits that the Strategy should include a clear commitment to extend the Bail Supervision Scheme to children in care and to provide whatever resources or funding that is required to implement this as a matter of priority.

5.11 The Children Act should be amended to extend to young persons charged with an offence allegedly committed when the person was a juvenile.

5.12 Training should be provided to all stakeholders about how to recognise children and young persons with special needs and what supports are available to them.

²⁷ Ibid page 13-15

5.13 The United Nations defines a “young person” as a person under the age of 25 and the ACJRD submits the youth justice strategy should be in line with the international definition.

5.14 The ACJRD recommends that the Youth Justice Strategy 2020-2026 advances proposals for a transition period between the youth criminal justice system and the adult criminal justice system. This should include educational training for stakeholders.

5.15 Case managers should be appointed to all children who regularly appear before the Children Court, this is particularly important for children in care whose address may change on a regular basis.

5.16 The ACJRD submits that guidelines in relation to the prosecution of offences committed while juveniles are receiving therapeutic treatment should be provided.

5.17 The ACJRD submits that the Children Act should be amended to provide for suspended sentences for juveniles.

5.18 It is submitted the Children Act should be amended to allow juveniles to apply for enhanced remission. Such a provision would be consistent with the principle that detention should be used only as a measure of last resort and for the shortest appropriate period of time.

5.19 The ACJRD recommends the strategy requires clear post release plans for young persons leaving detention which clearly states who is responsible for the arrangement of supports and accommodation and a time frame in which they must be provided, to ensure that they are in place before the child or young person leaves detention.

5.20 The ACJRD submits that in circumstances where the requirements under the Act apply to persons convicted of any manner of sexual offence, including minor sexual offences, and for the purposes of giving true regard to the varying degrees of maturity and neuro-diversity of children, the Act should be amended to give judges the discretion to impose a shorter period of supervision, as may be appropriate.

5.21 The ACJRD further recommends that s.8(4) (b) be amended to include persons who were 18 at the time of the offence for which they have been convicted.

6. The ACJRD submits that any Youth Justice Strategy must engage with the Victims Rights Directive and provide for the rights of victims. The ACJRD suggests this should be done at all stages of the youth justice system.

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